

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ENGELHARD CORPORATION,

Plaintiff,

vs.

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT OF  
DEFENSE, DONALD RUMSFELD  
in his official capacity as SECRETARY  
OF THE DEPARTMENT OF DEFENSE,  
U.S. MINT, HENRIETTA HOLSMAN  
FORE, in her official capacity as DIRECTOR  
OF THE U.S. MINT, NUCLEAR  
REGULATORY COMMISSION, and NILS  
J. DIAZ, in his official capacity as CHAIRMAN  
OF THE NUCLEAR REGULATORY  
COMMISSION,

Defendants.

Civil Action No.:

**05 11241 JLT**

RECEIPT # \_\_\_\_\_  
AMOUNT \$ 250.00  
SUMMONS ISSUED 3  
LOCAL RULE 4.1 \_\_\_\_\_  
WAIVER FORM \_\_\_\_\_  
MCF ISSUED \_\_\_\_\_  
BY DPTY. CLK. M.P.  
DATE 6/13/05

COMPLAINT

MAGISTRATE JUDGE RBC

**INTRODUCTION**

1. This is an action by Engelhard Corporation seeking contribution and other equitable relief for damages and defense costs associated with property damage and other losses caused by the release and/or threatened release of hazardous substances, radioactive materials and other contaminants at the former Engelhard Corporation facility located at State Route 152, Plainville, Massachusetts (the "Facility").

### **THE PARTIES**

2. The Plaintiff, Engelhard Corporation (hereinafter "Engelhard"), is a Delaware corporation with its principal offices at 101 Wood Avenue, Iselin, New Jersey, 08830.
3. Defendant, United States of America (the "United States"), acting through its departments, agencies and instrumentalities, contracted with Engelhard for the production of nuclear fuel fabrication and development services, and for the manufacture of coinage and coin stock products. All such contracts were performed at the Facility.
4. Defendant, U.S. Department of Defense, is the department of the Federal government responsible for the national defense.
5. Defendant, Donald Rumsfeld, acting in his official capacity, is the Secretary of the Department of Defense.
6. Defendant, U.S. Mint, is the agency of the Federal government responsible for the manufacture of the national money supply.
7. Defendant, Henrietta Holsman Fore, acting in her official capacity, is the Director of the U.S. Mint.
8. Defendant, Nuclear Regulatory Commission, is the agency of the Federal government responsible for the national nuclear regulatory program.
9. Defendant, Nils J. Diaz, acting in his official capacity, is the Chairman of the Nuclear Regulatory Commission.

## **JURISDICTION AND VENUE**

10. Engelhard brings this action against all defendants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. §§ 9601-9675; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-6992; and the Declaratory Judgment Act (“DJA”), 28 U.S.C. §§ 2201-2202.
11. Jurisdiction in this Court is founded upon Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).
12. Venue is proper in this District under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because each of the Defendants may be found in this Judicial District. Venue is proper in this District under Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), because the Facility may be found in this Judicial District.
13. Sections 101(21) and 120(a)(1) of CERCLA, 42 U.S.C. §§ 9601(21) and 9620(a)(1), waive the United States’ sovereign immunity with respect to actions brought under CERCLA. Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), waives the United States’ sovereign immunity with respect to actions brought under RCRA.

## **STATEMENT OF FACTS**

### **History of Engelhard Corporation**

14. In 1957, the D. E. Makepeace division of Engelhard Industries, Inc. built the Facility, as a new manufacturing facility on about 18.3 acres on the west side of Massachusetts State Route 152 in Plainville, Massachusetts, for the purpose of

expanding its uranium metal fabrication operations which were conducted pursuant to contracts with the United States Atomic Energy Commission and its licensees.

15. After a series of corporate reorganizations, the current Engelhard Corporation was formed in 1981.
16. Engelhard Corporation is the successor-in-interest to Engelhard Industries, Inc.

#### **Nuclear Fuel Processing at the Facility**

17. From 1957 to 1962, the primary operations at the Facility were nuclear component fabrication, comprised of melting uranium alloys, shaping, forming and heat-treating operations, and "Form Roll" operations, a steel and titanium metal shaping and treating operation to produce aerodynamic surfaces.
18. From 1957 to 1962, all nuclear activities at the Facility were governed by the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq.
19. The AEA authorized the Atomic Energy Commission to create and develop nuclear energy research and development programs for both military and civilian purposes, and to promote a civilian industry supporting military and civilian application of nuclear energy.
20. Since 1954, the Atomic Energy Commission and its successor agencies have directly through their various regional offices and government-owned national research laboratories, and indirectly through other departments, agencies or instrumentalities of the United States, induced private sector business enterprises to engage in research and manufacturing activities, under contracts and otherwise, related to military and civilian uses of radioactive material.

21. The Atomic Energy Commission and its successor agencies exercised a uniquely pervasive degree of control over private enterprises engaged in nuclear industrial activities.
22. Under the AEA, private ownership of special nuclear material was prohibited until 1964.
23. The United States controlled the manufacture of products using government-owned radioactive material at private facilities, including at the Facility.
24. The United States controlled the safety and security, accountability for radioactive material, and radioactive material handling, storage and disposal at private facilities, including the Facility.
25. Engelhard held Special Nuclear Material license SNM No. 185, and its amendments, that permitted Engelhard to use and process special nuclear material.
26. From the late 1950's until 1962, Engelhard provided nuclear research services, nuclear fuel processing, and fabrication of nuclear fuel elements pursuant to the specific review and approval of the Atomic Energy Commission.
27. The development, processing, and fabrication activities listed in paragraph 26 were undertaken by Engelhard under the direction of the Atomic Energy Commission.
28. The United States owned all of the enriched uranium and other radioactive materials required to fabricate products under government contracts supporting military and civilian programs.
29. The United States also specified how the government-owned materials were stored, accounted for and disposed.

30. The United States retained ownership and control over finished products fabricated at the Facility.
31. From 1957 through 1962, the United States directly benefited from the work performed at the Facility.
32. In the nuclear component fabrication process, large quantities of trichloroethylene were used to clean the products and equipment during production.
33. From 1957-1962 all floor washings, floor drains, laundry and shower wastewater from the nuclear operation were filtered and discharged to large leach fields on-site.
34. The Atomic Energy Commission was aware that the use and processing of the government-owned nuclear materials would result in radioactive production wastes, losses of nuclear material, contamination of work and process areas.
35. Engelhard terminated all of its work with enriched uranium in 1962 and conducted decommissioning and decontamination of the Facility under oversight and with written approval of the Atomic Energy Commission.
36. Despite the written approval of the Atomic Energy Commission, residual radioactive contamination arising from operations in the 1950's and 1960's is still found at the Facility.
37. Under the provisions of the AEA, title to radioactive materials found today in the soil and groundwater at the Facility still resides with the United States.
38. In 1990, the Facility was identified for inclusion in the Nuclear Regulatory Commission's Site Decommissioning Management Plan.



39. In 1996, the Nuclear Regulatory Commission approved the Engelhard decommissioning plan for the Facility.
40. In 1997, the Oak Ridge Institute for Science and Education performed an independent confirmatory survey of certain building areas at the Facility. Some portions of affected buildings at the Facility were released for unrestricted use.
41. Other portions of the Facility are presently being addressed in Engelhard's ongoing decommissioning plan for the remainder of the Facility.
42. In March 1997, regulatory jurisdiction for radioactive issues was transferred from the Nuclear Regulatory Commission to the Commonwealth of Massachusetts pursuant to Section 274b of the AEA, 42 U.S.C. § 2021b, when Massachusetts became an Agreement State. At that time, the Nuclear Regulatory Commission removed the Facility from its Site Decommissioning Management Plan.
43. Presently stored on site at the Facility are approximately 93 tons of radioactive contaminated waste material generated during the decontamination and decommissioning of the Facility.

#### **Coinage Contracts with the U.S. Mint**

44. In 1966, Engelhard added capacity to the Facility, including Building 6, for the production of silver-copper alloy sandwich blanks and coin stock for the U. S. Mint.
45. Under numerous contracts, the U. S. Mint provided Engelhard with government-owned materials used in the production of silver-copper alloy sandwich blanks and coin stock.

46. Because of the high intrinsic value of the government-owned material shipped to the Facility, Engelhard was required to institute rigorous inventory control measures.
47. Among the new operations added to Building 6 in 1966 was a degreasing pit located in the floor used to degrease the coin stock using trichloroethylene, and later, other chlorinated solvents.
48. Engelhard also produced other precious metal alloys by melting silver, copper, lead, gold and other metals in furnaces, and by conducting metal finishing and fabricating operations, including use of metal degreasers that were located in Buildings 5 and 8 and used perchloroethylene and trichloroethane.
49. From 1957-1973, wastewater from the Facility's nonnuclear operations was discharged to holding ponds or pits at the back of the plant.
50. From 1973-1981, Engelhard operated an ion exchange wastewater treatment system designed to treat the facility's wastewater for reuse.
51. Numerous unintentional spills and releases occurred that resulted in the discharge of treated and untreated wastewater at the back of the Facility.
52. In about 1978, Engelhard arranged for wastewater to be pumped out of the holding ponds and trucked away to a local wastewater treatment plant.
53. In 1981, Engelhard paid for and began using a connection to the local sanitary sewer system for the discharge of all wastewater from the Facility.

#### **Contamination at the Facility**

54. From 1957 until 1993 when Engelhard ceased then existing operations at the Facility, hazardous wastes and hazardous constituents, including radionuclides,



trichloroethylene, perchloroethylene, trichloroethane, and lead, were released to the environment at the Facility as a result of unintentional spills and releases.

55. Elevated levels of mercury, cadmium and silver have been found in sediments in an embayment of Turnpike Lake, adjacent to the facility, and dichloroethene, dichloroethane, perchloroethylene, trichloroethylene, and trichloroethane have consistently been found in groundwater within bedrock wells and east of the facility and Route 152.
56. On September 9, 1993, Engelhard and the United States Environmental Protection Agency (“EPA”) entered into an Administrative Order on Consent, RCRA Docket No. I-92-1051 (“Administrative Order”), in which EPA determined in Finding number 6 that “Hazardous Wastes and/or Hazardous Constituents which have been released at the [Plainville] Facility have migrated and may still be migrating to the Ground Water, soils, surface waters and sediments at or in the vicinity of the Facility.”
57. Pursuant to the Administrative Order, Engelhard has hired environmental contractors and consultants to conduct investigations as to the extent and concentrations of hazardous constituents, and to mitigate and prevent constituents from migrating offsite; environmental contractor costs incurred by Engelhard as of December 31, 2004, are approximately \$15,283,630.09.
58. Additionally, Engelhard purchased five (5) homes near the Facility at a cost of \$971,000 because of solvents in the shallow groundwater.
59. On or about August 8, 2001, Engelhard issued to the United States Department of Justice, a “demand in writing” under Section 107 of CERCLA, 42 U.S.C. §9607,

asserting the United States' liability under Section 107 and Section 113 of CERCLA, 42 U.S.C. §§9607 and 9613, for environmental response costs at the Facility.

60. On March 4, 2005, Engelhard gave notice by registered mail of its intent to bring a citizen's suit against the Defendants under RCRA pursuant to the notice requirements of Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), and 40 C.F.R. Part 254.
61. The United States has so far failed to either pay for any of the environmental response costs incurred by Engelhard at the Facility or otherwise acknowledge its responsibility for such costs.

**FIRST CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
UNDER CERCLA §107 FOR  
COST RECOVERY OF ALL ENVIRONMENTAL RESPONSE COSTS**

62. Engelhard repeats and realleges the allegations of paragraphs "1" through "61" of this Complaint, as if set forth in this paragraph at length.
63. The Facility is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
64. Each of the Defendants is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

65. Defendants are persons who operated the Facility at a time when hazardous substances owned by the Defendants were released at the Facility, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).
  66. Defendants are persons who arranged for disposal or treatment of hazardous substances at the Facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3).
  67. There have been releases of hazardous substances at the Facility, within the meaning of Section 107 of CERCLA, 42 U.S.C. §9607.
  68. These releases of hazardous substances have caused Engelhard to incur necessary costs of response within the meaning of Section 107 of CERCLA, 42 U.S.C. §9607.
  69. The environmental response costs incurred by Engelhard are necessary and consistent with the National Contingency Plan (the "NCP"), 40 C.F.R. Part 300.
  70. Engelhard is an innocent party under CERCLA within the meaning of Section 107(b)(3), 42 U.S.C. § 9607(b)(3).
  71. Defendants are jointly and severally liable under Section 107 of CERCLA, 42 U.S.C. §9607, for all environmental response costs that Engelhard has incurred and may continue to incur in the future, consistent with the NCP, including administrative oversight, and costs to evaluate the exposure to hazardous substances by the parties in and around the Facility, and costs incurred by Engelhard in responding to the release of hazardous substances at the Facility.
- WHEREFORE, Engelhard requests that this Court enter judgment in favor of Engelhard and against Defendants as follows:

- A. Declaring that Defendants are jointly and severally liable under Section 107 of CERCLA, 42 U.S.C. § 9607, for all response costs which were incurred in the past or which will be incurred in the future by Engelhard in responding to such release or threatened release of hazardous substances;
- B. For such amount as may be determined by the Court to satisfy the obligation of Defendants for response costs incurred by Engelhard in responding to such release or threatened release of hazardous substances; and
- C. For interest, costs and such other and further relief as the Court determines is just and appropriate.

**SECOND CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
FOR CONTRIBUTION UNDER CERCLA §107(A)(4)(b)**

- 72. Engelhard repeats and realleges the allegations of paragraph “1” through “71” of this Complaint, as if set forth in this paragraph at length.
- 73. Pursuant to CERCLA Section 107(a)(4)(B), 2 U.S.C. §9613(a)(4)(B), Defendants are liable for their equitable share of Engelhard’s response costs, including all costs of removal or remedial action, and other necessary costs of response incurred by Engelhard.
- 74. Defendants are liable for contribution under CERCLA §107(a)(4)(B), 42 U.S.C. §9607(a)(4)(B), for their share of environmental response costs that Engelhard has incurred and may continue to incur in the future, consistent with the NCP, in responding to the release of hazardous substances at the Facility.

WHEREFORE, Engelhard requests that this Court enter judgment in favor of Engelhard and against Defendants as follows:

- A. Declaring that Defendants are liable to Engelhard for contribution under Section 107 of CERCLA, 42 U.S.C. § 9607, and Federal common law for all response costs which were incurred in the past or which will be incurred in the future by Engelhard in responding to such release or threatened release of hazardous substances;
- B. For such amount as may be determined by the Court to satisfy the obligation of Defendants for response costs incurred by Engelhard in responding to such release or threatened release of hazardous substances; and
- C. For interest, costs and such other and further relief as the Court determines is just and appropriate.

**THIRD CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
FOR CONTRIBUTION UNDER FEDERAL COMMON LAW**

- 75. Engelhard repeats and realleges the allegations of paragraph “1” through “74” of this Complaint, as if set forth in this paragraph at length.
- 76. Pursuant to CERCLA Section 113(f), 42 U.S.C. § 9613(f), Defendants are liable for their equitable share of Engelhard’s response costs, including all costs of removal or remedial action, and other necessary costs of response incurred by Engelhard.

77. Pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), claims under CERCLA “shall be governed by Federal law.”
78. Defendants are liable for contribution under Federal common law, for their share of environmental response costs that Engelhard has incurred and may continue to incur in the future, consistent with the NCP, in responding to the release of hazardous substances at the Facility.

WHEREFORE, Engelhard requests that this Court enter judgment in favor of Engelhard and against Defendants as follows:

- A. Declaring that Defendants are liable to Engelhard for contribution under Section 107 of CERCLA, 42 U.S.C. § 9607, and Federal common law for all response costs which were incurred in the past or which will be incurred in the future by Engelhard in responding to such release or threatened release of hazardous substances;
- B. For such amount as may be determined by the Court to satisfy the obligation of Defendants for response costs incurred by Engelhard in responding to such release or threatened release of hazardous substances; and
- C. For interest, costs and such other and further relief as the Court determines is just and appropriate.



**FOURTH CAUSE OF ACTION**  
**AGAINST ALL DEFENDANTS**  
**FOR CONTRIBUTION UNDER CERCLA §113(f)(3)(B)**

79. Engelhard repeats and realleges the allegations of paragraph “1” through “78” of this Complaint, as if set forth in this paragraph at length.
80. Pursuant to the Administrative Order of September 9, 1993, the EPA required Engelhard to undertake the investigation and remediation of the Facility.
81. Pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), the Administrative Order resolves some or all of Engelhard’s liability to the EPA for response costs in the investigation and remediation of the Facility.
82. Since the Administrative Order is a “settlement agreement” pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), Defendants are liable for contribution under CERCLA §113(f)(3)(B), 42 U.S.C. §9613(f)(3)(B), for their share of environmental response costs that Engelhard has incurred and may continue to incur in the future, consistent with the NCP, in responding to the release of hazardous substances at the Facility.

WHEREFORE, Engelhard requests that this Court enter judgment in favor of Engelhard and against Defendants as follows:

- A. Declaring that Defendants are liable to Engelhard for contribution under Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for all response costs which were incurred in the past or which will be incurred in the future by Engelhard in responding to such release or threatened release of hazardous substances;

B. For such amount as may be determined by the Court to satisfy the obligation of Defendants for response costs incurred by Engelhard in responding to such release or threatened release of hazardous substances; and

C. For interest, costs and such other and further relief as the Court determines is just and appropriate.

**FIFTH CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
UNDER RCRA §7002**

83. Engelhard repeats and realleges the allegations of paragraph “1” through “82” of this Complaint, as if set forth in this paragraph at length.
84. Pursuant to Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), the United States is a person who, acted as a past or present generator of “solid waste” and “hazardous waste” at the Facility, as those terms are defined in Section 1004 of RCRA, 42 U.S.C. § 6903.
85. Pursuant to Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), the United States is a person who, acted as a past or present operator of a “treatment, storage, or disposal facility,” as those terms are defined in Section 1004 of RCRA, 42 U.S.C. § 6903.
86. Pursuant to Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), the United States is a person who, has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of solid or hazardous waste which presents an imminent and substantial endangerment to health or the environment.

87. Defendants are liable pursuant to Section 7002(a)(2) of RCRA, 42 U.S.C. § 6972(a)(2), for any and all past and future environmental response costs at the Facility, and/or for any other equitable relief that this Court may determine.

WHEREFORE, Engelhard requests that this Court enter judgment in favor of Engelhard and against Defendants as follows:

- A. Declaring that Defendants are liable under Section 7002 of RCRA, 42 U.S.C. § 6972, for any and all response costs which were incurred in the past or which will be incurred in the future by Engelhard in responding to such release or threatened release of hazardous substances;
- B. For such amount as may be determined by the Court to satisfy the obligation of Defendants for response costs that will be incurred by Engelhard in responding to such release or threatened release of hazardous substances; and
- C. For such other and further equitable relief as the Court determines is just and appropriate.

**SIXTH CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
UNDER DJA §§ 2201-2202**

88. Engelhard repeats and realleges the allegations of paragraph “1” through “87” of this Complaint, as if set forth in this paragraph at length.
89. This Court has the power to render declaratory relief under 28 U.S.C. § 2201 and under CERCLA §113(g)(2), 42 U.S.C. §9613(g)(2).

90. This Court should declare that Defendants are liable as alleged above under CERCLA for necessary response costs consistent with the NCP that Engelhard will incur in responding to the releases of hazardous substances alleged above and for all other relief deemed appropriate.
91. This Court should declare that Defendants are liable as alleged above under RCRA for the abatement of the imminent and substantial endangerment caused by environmental conditions at the Facility.

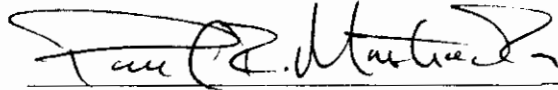
WHEREFORE, Engelhard requests that this Court enter judgment in favor of Engelhard and against Defendants as follows:

- A. Declaring that Defendants are liable to Engelhard under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and Section 7002 of RCRA, 42 U.S.C. § 6972, for any and all response costs which were incurred in the past or which will be incurred in the future by Engelhard in responding to such release or threatened release of hazardous substances;
- B. For such amount as may be determined by the Court to satisfy the obligation of Defendants for response costs incurred by Engelhard in responding to such release or threatened release of hazardous substances; and
- C. For such other and further equitable relief as the Court determines is just and appropriate.

Respectfully submitted,

For the Plaintiff  
ENGELHARD CORPORATION,  
By its attorneys,

Dated: June 13, 2005



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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTSfirst party on each side only) Engelhard Corporation v. United States of America, et.al.

ings based upon the numbered nature of suit code listed on the civil cover sheet. (See local

15, R.23, REGARDLESS OF NATURE OF SUIT.

20, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or AO 121  
20\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases140, 151, 190, 210, 230, 240, 245, 290, 310,  
340, 345, 350, 355, 360, 362, 365, 370, 371,  
891.1. Title of case (name of  
the case being  
filed)220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660,  
690, 810, 861-865, 870, 871, 875, 900.

05 11241 JLT

V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action been the same parties and based on the same claim ever been filed in this court?

YES ☐NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐NO ☒

If so, is the U.S. an officer, agent or employee of the U.S. a party?

YES ☐NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐NO ☒

7. Do all parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

N/A

YES ☐NO ☐

If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐Central Division ☐Western Division ☐

If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐Central Division ☐Western Division ☐

Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, 8 separate sheet identifying the motions)

YES ☐NO ☐

TYPE OR PRINT)

Y'S NAME Paul R. Mastrocola, Esq.

Burns &amp; Levinson LLP, 125 Summer Street, Boston, MA 02110

PHONE NO. (617) 345-3244



JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Engelhard Corporation

## DEFENDANTS

United States of America

(b) County of Residence of First Listed Plaintiff Norfolk County  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant DC  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Laurel Bedig, Esq.

Attorneys (If Known) U.S. Dept. of Justice  
Environmental Defense Section  
601 D St., NW, Suite 8000  
Washington, DC 20004

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paul R. Mastrocola, Esq., Burns & Levinson LLP  
125 Summer St., Boston, MA 02110 (617) 345-3244

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                                |                                |   |                                |                                |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | PTF <input type="checkbox"/> 2 | DEF <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | PTF <input type="checkbox"/> 5 | DEF <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 | DEF <input type="checkbox"/> 3 | Foreign Nation  | PTF <input type="checkbox"/> 6 | DEF <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property					

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
CERCLA Sec. 107, Sec. 113, RCRA Sec. 7002, DJA Sec. 2201-2202

Brief description of cause: Plaintiff seeks contribution and other equitable relief for damages and defense costs caused by release of hazardous substances.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
 DEMAND \$  
 CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

June 13, 2005

Paul R. Mastrocola

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_